IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 33147 of 2006(U)

PETITIONER:

G.L.LAKSHMI, W/O.G.ANILKUMAR,
'THIRUVATHIRA', TC.NO.18/1860(1), JAI NAGAR,
THIRUMALA P.O., THIRUVANANTHAPURAM- 695006.

BY ADV. SRI.P.K.BEHANAN

RESPONDENTS:

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1. THE PRINCIPAL AND CONTROLLING OFFICER,
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,
IRANIMUTTOM, THIRUVANANTHAPURAM-9.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE (J) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PSC OFFICE,
THIRUVANANTHAPURAM.

4. DR.M.T.HAMZA, ASSISTANT SURGEON,
PRIMARY HEALTH CENTRE, MELATOOR P.O.,
MALAPPURAM DISTRICT.

R3 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R4 BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
R1 & R2 BY GOVERNMENT PLEADER SRI. T.T. MUHAMMED.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 33147/2006.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE COPY OF THE GAZETTE NOTIFICATION DATED 26.11.2002.

EXT. P2 : TRUE COPY OF THE PSC SELECT LIST NO.442/2005 PUBLISHED BY THE KPSC.

EXT. P3 : TRUE COPY OF THE G.O.(MS) NO.27/05/H& FWD DTD. 2.2.05.

EXT. P4 : TRUE COPY OF THE G.O.(MS) NO.232/71/PD DTD. 12.8.1971 ISSUED BY THE CHIEF SECRETARY.

EXT. P5 : TRUE COPY OF THE CIRCULAR NO.4441/ADV-C3/97/P&ARD WHICH IS TAKEN BY THE OFFICIAL WEBSITE OF KPSC.

EXT. P5(A) : TRUE COPY OF CIRCULAR NO. 1634 DATED 18.2.99 ISSUED BY THE GOVERNMENT.

EXT. P6 : TRUE COPY OF THE RESUBMITTED REPRESENTATION DATED 16.11.06 BY THE PETITIONER BEFORE THE GOVERNMENT.

EXT. P7 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.29935/06 DTD. 15.11.06 OF THE HIGH COURT FILED BY THE PETITIONER.

EXT. P8 : TRUE COPYOF THE G.O.(RT) NO.3556/06/H& FWD DTD. 6.12.06 ISSUED BY THE GOVERNMENT.

EXT. P9 : TRUE COPY OF THE JUDGMENT DATED 26.9.06 PASSED IN W.P.(C) 25327/06 FILED BY THE 4TH RESPONDENT.

EXT. P10 : TRUE COPY OF THE LETTER NO.36711/05/H&FWD DTD. 6.1.06 ISSUED BY THE SECRETARY TO GOVERNMENT.

EXT. P11 : TRUE COPY OF THE LETTER NO.276/E1/05 DTD. 30.9.06 ISSUED BY THE SECRETARY TO GOVERNMENT.

EXT. P12 : TRUE COPY OF THE LETTER NO.2214/E1/06/GHMCT/DTD.27.2.07 ISSUED FROM THE 1ST RESPONDENT.

EXT. P13 : TRUE COPY OF THE LETTER NO.2214/E1/2006/GHMCT DTD. 18.12.2006 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXTS:

EXT, R2(A) : PHOTO COPY OF THE CENTRAL COUNCIL OF HOMOEOPATHY REGULATION.

EXT. R4(A) : TRUE COPY OF THE PROCEEDINGS OF THE GOVERNMENT DATED 16.4.2003.

EXT. R4(B) : TRUE COPY OF THE CIRCULAR NO.768/R12004 3 & ARD DATED 15.7.2004 ISSUED BY THE GOVERNMENT.

EXT. R4(C) : TRUE COPY OF THE JUDGMENT DATED 26.9.2006 IN W.P.(C) NO.25327/2006 OF THIS HON'BLE COURT.

EXT.R4(D) : TRUE COPY OF THE AFFIDAVIT FILED IN W.P.(C) 25327/06 BEFORE THIS HON'BLE COURT.

EXT. R4(E) : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH RESPONDENT ON 1/12/2005 SUBMITTED BEFORE THE SECRETARY TO GOVERNMENT.

K.M.JOSEPH, J.

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WP.(C) No. 33147 OF 2006

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Dated this the 9th day of April, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is a post graduate in Homoeopathic Medicine. She belongs to Scheduled Caste category. Three vacancies of Tutor in Practice of Medicine were reported to the Public Service Commission. Ext.P1 notification followed dated 26.11.2002. Petitioner is rank No. 3 in Ext.P2 rank list published by the Public Service Commission. Ext.P3 is the Government Order dated 2.2.2005. Thereunder Government have upgraded two posts of Tutor in the Department of Practice of Medicine in the Homoeopathic Medical College. Ext.P3 is null and void as it is against the principles laid down in the earlier Government Order issued by the Chief Secretary. Exts. P4, P5 and P5 (a) are relied on essentially to contend that once vacancies are reported to Commission, they should neither be cancelled nor reduced. It is further stated in Ext.P4 that they should also note that the date of occurrence of the vacancy should be treated as the crucial date to decide the method of appointment and that the practice, if any, of

filling of vacancies by promotion or transfer after reporting the vacancies to the Commission should be discontinued. It is understood that the fourth respondent who is working as Assistant Surgeon in the Allopathic Medical Department wants to get a transfer to the post of Lecturer in the Homoeopathic Medical College. Petitioner opposed the transfer as it is to the post of Lecturer upgraded from the post of Tutor. Petitioner submitted Ext.P6. This court directed by Ext.P7 to consider the same. Ext.P8 is the order passed. Petitioner challenged Exts. P3 and P8. Ext.P9 is the judgment of this court whereunder this court directed the representation of the fourth respondent to be considered in accordance with law. According to the petitioner under the guise of Ext.P9 judgment the influence of the fourth respondent has become much stronger. Ext.P10 is a letter dated 6.1.2006 issued by Secretary to Government by which the Government has directed the Principal and Controlling Officer of Government Homoeopathic Medical College, Thiruvananthapuram to fill up the seventeen vacancies of Tutor already reported to the Kerala Public Service Commission by candidates advised by the Commission. But it is

further stated that no new posts of Tutor hereinafter will be created or filled as Tutor posts have been declared as vanishing category. Ext. P11 is the letter by the Principal and Controlling Officer in which it is inter alia stated that it will be more beneficial to the department as well as the petitioner when the unfilled vacant post of Lecturer in the department of Practice of Medicine is downgraded to Tutor post.

2. Counter affidavits have been filed. Petitioner has produced Exts.P12 and P13. Ext.P12 is purported to be issued by the Public Information Officer, whereunder he stated that in the Government Homoeopathic Medical Colleges the teaching staff required as per the Central Council of Homoeopathy pattern is not implemented. Ext.P13 is the details of Tutors appointed after 2.2.2005. It shows that as many as 20 Tutors have been appointed the last date of joining being 2.12.2006. Rank Nos. 1 and 2 in Ext.P2 rank list have already been appointed.

3. Heard counsel for the parties. Counsel for the petitioner would point out that it is clearly opposed to Exts.P4, P5 and P5(a) to upgrade the post of tutor and that he would submit that the vacancies

were reported on 28.7.2001. Ext.P1 notification is brought out on 26.11.2002. After reporting the vacancies and publication of the notification it is by Ext.P3, which is in the year 2005 that the vacancies which were already reported to the Public Service Commission is purported to be upgraded as Lecturer and sought to be filled by appointment of the fourth respondent, he submits. It is impermissible, he contends. He submits that Ext.P12 would clearly show that in the Government Homoeo Medical Colleges the teaching staff required as per the Central Council of Homoeopathy pattern is not implemented. Thus there is no basis for treating the post of Tutor as vanishing category, he contends. He emphasises Ext.P13 to show that persons have been appointed and they have joined as late as in December, 2006. Counsel for the petitioner relied on the judgment of this court in **Harindran v. State of Kerala** (2006(4) ILR 680).

4. Learned counsel for the fourth respondent Sri.Mohanakannan would point out that he made an application seeking repatriation to the parent department prior to the date of the notification. That application was not considered as evident from Ext.R4(a) only on account of the

reason that SLP was pending against the judgment of the Full Bench. Apex Court has finally confirmed the judgment of the Full Bench. Therefore there is no obstacle remaining for his repatriation back to the Homoeopathic Medical Department, he contends. There is a vacancy, he would contend, and it is his legal right to be repatriated. No doubt counsel for the petitioner would point out that it is the duty of the Government to examine whether the person is entitled to be confirmed in the department to which he is transferred. In the impugned order Ext.P8 Government has only stated that it has examined the matter in detail and it is inter alia ordered that by Ext.P3 it was ordered that the Tutor posts in Homoeopathic Medical Education Department will be treated as vanishing category and Government did not find any reason to change the above decision.

Having heard counsel for the parties, I am of the view that the matter requires reconsideration particularly in the light of Exts.P12 and P13. I find that there is no reference also to Exts.P4, P5 and P5(a). In such circumstances Ext.P8 is quashed and the second respondent will afford an opportunity of hearing to the petitioner and the fourth

respondent and take a decision afresh in accordance with law within a period of two months from the date of receipt of a copy of this judgment. I leave open the challenge of the petitioner to Ext.P3. Till such time as a decision is taken by the second respondent as aforesaid, interim order will continue.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.